

## REMARKS

Favorable reconsideration of this application in light of the preceding amendments and the following discussion is respectfully requested.

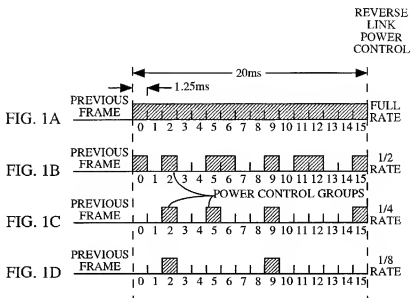
No claims having been canceled or added by this response, the Applicants respectfully submit that claims 1 and 4-15 remain properly under consideration in this application. The above Listing of Claims shows the amended claims in marked-up form in accordance with 37 C.F.R. § 1.121.

### **Rejections under 35 U.S.C. § 103**

Claims 1 and 4-15 stand rejected under 35 U.S.C. 103(a) as unpatentable over Chen (U.S. Patent No. 6,067,458) ("Chen") in view of in view of Kobylinski et al. (U.S. Patent 6,044,272) ("Kobylinski"). The Applicants traverse this rejection.

With regard to Chen, the Examiner points to col. 6, lines 10-48, as teaching "varying rate information exchange between mobile station and base station" that uses an "idle time" rate of 1/8 of the full rate while a "higher rate is used when voice or data communicating between these two components," Action at 3. The Applicants contend that this interpretation is inconsistent with the teachings of Chen as would be understood by one of ordinary skill in the art.

The Applicants contend that, as reflected in Chen's FIGS. 1A-D (reproduced below), while the effective transmission rate decreases through FIGS. 1A-D, there is no suggestion that the actual transmission rate, *i.e.*, the transmission rate during the active periods designated by the shaded blocks, varies in any way.



The Applicants further contend that no teaching or suggestion has been identified in Chen with regard to the transmission of "channel quality information" as recited in claim 1. Although the Applicants agree that Chen provides for higher effective transmission rates when transmitting data or voice when considered relative to the rates used for transmitting "silence," as taught by Chen, the additional information being transmitted is the content of the message, not additional or more frequent information regarding the "channel quality information."

The Applicants note that the MPEP provides:

It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. Furthermore, if an initially rejected application issues as a patent, the rationale behind an earlier rejection may be important in interpreting the scope of the patent claims. Since issued patents are presumed valid and constitute a property right, the written record must be clear as to the basis for the grant. Since patent examiners cannot normally be compelled to testify in legal proceedings regarding their mental processes it is important that the written record clearly explain the rationale for decisions made during prosecution of the application.

MPEP § 706.02(j) (internal citations omitted). The Applicants respectfully contend that the Examiner's allegations regarding the particular type of information being transmitted by Chen does not fairly communicate the logical or factual basis upon which the allegation is based. The Applicants further contend that speculation alone does not constitute a valid basis for maintaining a rejection under 35 U.S.C. § 103(a).

Accordingly, should the Examiner wish to maintain the present rejection based on the teachings of Chen, the Applicants request that the next communication identify, with specificity, the portion or portions of Chen that are alleged to teach the communication of "channel quality information" at varying rates so that the Applicants may have a full and fair opportunity to understand and address the Examiner's reasoning. If no such teachings are identified, the Applicants maintain that this rejection should be withdrawn as not properly supported.

With respect to Kobylinski, the Applicants again contend that the disclosure, as understood by one of ordinary skill in the art, does not fairly teach or suggest the transmission of “channel quality information” at different rates. In particular, the Applicants note that Kobylinski’s FIGS. 1A and 1B (reproduced below) indicate that the mobile unit reports “channel quality information” including, for example, measured RSS values, measured BER values and DVCC via the SACCH (Slow Associated Control CHannel) word in response to either Measurement Order 1 or Measurement Order 2.

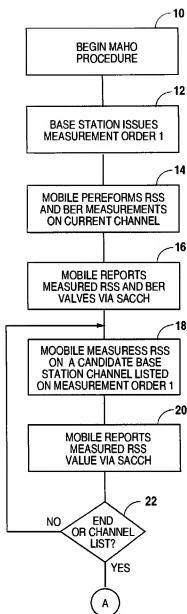


Fig. 1A

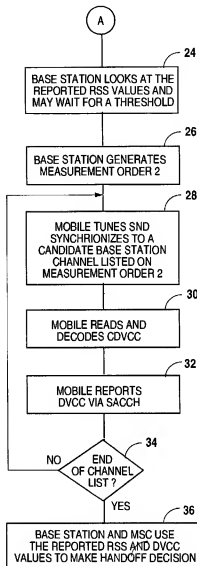


Fig. 1B

As reflected in Kobylinski's FIG. 2 (reproduced below), the SACCH word 52 is present in each slot 50 of each frame 40. Accordingly, the Applicants contend that no teaching

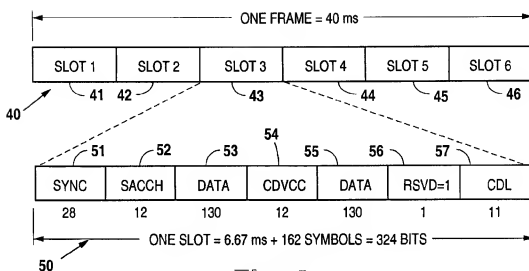


Fig. 2

has yet been identified in Kobylnski that would suggest to one of ordinary skill in the art that “channel quality information” is being transmitted at different rates during idle periods when compared with data transmission periods. Indeed, the Applicants contend that, in accord with the teachings of Kobylnski, one of ordinary skill in the art would understand the mobile unit to be providing “channel quality information” at a substantially constant rate in response to either of the measurement orders generated by the base station.

The Applicants further note that claim 1 requires that the mobile station report “channel quality information at a first rate *in the absence of a reception of a data transmission from the base station*” (emphasis added). The Applicants contend that according to Kobylnski, the mobile station only reports “channel quality information” in

response to a command from the base station. Accordingly, the Applicants contend that the proposed combination of Chen and Kobylinski is insufficient to teach or suggest each of the elements of the recited method.

Accordingly, should the Examiner wish to maintain the present rejection based on the teachings of Kobylinski, the Applicants request that the next communication identify, with specificity, the portion or portions of Kobylinski that are alleged to teach the communication of “channel quality information” and/or the transmission of such information in the absence of a “Measurement Order” from the base station so that the Applicants may have a full and fair opportunity to understand and address the Examiner’s reasoning. If no such teachings are identified, the Applicants maintain that this rejection should be withdrawn as not properly supported.

With respect to claims 4 and 5, the Applicants incorporate the discussion provided above with regard to the deficiencies of the proposed combination of Chen and Kobylinski. The Applicants maintain that no teaching or suggestion has yet been identified that would suggest that the increase in the effective transmission rate illustrated by Chen translates into an increased transmission rate of “channel quality information.” Accordingly, in addition to their dependence from claim 1, the Applicants contend that claims 4 and 5 are separately allowable over the applied references.

With respect to claim 6, the Applicants incorporate the discussion provided above with regard to the deficiencies of the proposed combination of Chen and Kobylinski. The

Applicants maintain that no teaching or suggestion has yet been identified that would suggest that the increase in the effective transmission rate illustrated by Chen translates into any variation in the transmission rate of “channel quality information” as claimed or faster during transmission of data. Accordingly, in addition to its dependence from claim 1, the Applicants contend that claim 6 is separately allowable over the applied references.

With respect to claims 7-10, the Applicants incorporate the discussion provided above with regard to the deficiencies of the proposed combination of Chen and Kobylinski. The Applicants maintain that no teaching or suggestion has yet been identified that would suggest that the increase in the effective transmission rate illustrated by Chen translates into an increased transmission rate of “channel quality information.” Accordingly, the Applicants contend that these claims are allowable at least in light of their dependence from claim 1.

With respect to claims 11 and 12 and 13-15, the Applicants incorporate the discussion provided above with regard to the deficiencies of the proposed combination of Chen and Kobylinski with regard to claims 1-10. The Applicants maintain that no teaching or suggestion has yet been identified that would suggest that the increase in the effective transmission rate illustrated by Chen translates into an increased transmission rate of “channel quality information” as recited in both claim 11 and claim 13. The



Applicants contend, therefore, that these claims are allowable over the applied references for at least the reasons detailed above.

The Applicants request that the pending rejections be reconsidered and withdrawn accordingly.

### **CONCLUSION**

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections have been addressed and overcome, leaving the present application in condition for allowance. A Notice to that effect is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 503777, including, in particular, extension of time fees.

Respectfully submitted,

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